

In the Matter of Merchant Mariner's Document No. Z-779655
Issued to: MURIEL MARTIN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

412

MURIEL MARTIN

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 12 October, 1949, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-779655 issued to Muriel Martin upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving on board the American SS AFRICAN ENTERPRISE, under authority of the document above described, on or about 19 September, 1949, he unlawfully had in his possession certain narcotics: to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. When advised of his right to be represented by counsel of his own selection, he elected to have a Coast Guard Officer act as his counsel. He entered a plea of "not guilty" to the charge and specification.

It was stipulated that Appellant was serving on board the AFRICAN ENTERPRISE as an able seaman on 19 September, 1949; that Appellant had marijuana in his possession on board the ship on said date; and that he was fined \$1.73 for having possession of the marijuana. The only contested allegation was as to whether the possession was unlawful.

After the Investigating Officer had completed his opening statement, Appellant's counsel made an opening statement that he intended to prove that Appellant had never used marijuana and that Appellant was unaware of the marijuana being on his person since it had been "planted" there by someone else.

Thereupon, the Investigating Officer requested the Examiner to take judicial notice of Title 21 United States Code 184(a), 184(b) and then rested his case.

In defense, Appellant offered the testimony of a seaman who had served on board the AFRICAN ENTERPRISE with Appellant. The seaman testified that Appellant was well liked, a good worker, and he had never seen Appellant use or have in his possession any marijuana. Appellant then testified in his own behalf, after which the Investigating Officer introduced a rebuttal witness.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification and he entered an order suspending Appellant's Merchant Mariner's Document No. Z-779655 and all other licenses, certificates and documents issued to him by the U.S. Coast Guard or its predecessor authority, for a period of three years - one year to be an outright suspension from 12 October, 1949, and the remaining two years to be probationary for two years from 12 October, 1950.

From that order, this appeal has been taken, and it is urged that although the marijuana was found on Appellant's person, he had no knowledge as to how it happened to be in his possession. There is also a plea for clemency based on Appellant's prior clear record; the fact that he has a wholly dependent wife and grandfather; and the further statement that he is financially embarrassed and can find no other work.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 19 September, 1949, Appellant was serving as a member of the crew in the capacity of able seaman on board the American SS AFRICAN ENTERPRISE, under authority of his Merchant Mariner's Document No. Z-779655, while the ship was berthed at Brooklyn, New York.

On this date, a routine search of the ship and crew was conducted by the customs authorities. An examination of Appellant's person and a search of Appellant's quarters revealed nothing unusual.

Later that day, a Port Patrol Officer intercepted Appellant and told him to remove everything from his pockets. From his right rear trouser pocket, Appellant removed several keys and a handkerchief. When asked if that was all, Appellant replied in the affirmative. The officer then made further search and felt a lump in his right rear pocket. Appellant said it was a piece of paper and the officer told him to produce it. Appellant took it out of his pocket, handed it to the officer and asked him what it was. The officer recognized it as a marijuana bindle and opened it to verify his suspicions. The package contained about 30 grains of marijuana. When told that it was marijuana, Appellant denied that he had ever seen it before and stated that somebody in the mess hall must have put it into his pocket a short time before. Appellant said, at the time, that he had never used marijuana, had never seen it and he had no idea how it had come into his possession.

The marijuana was confiscated and Appellant was issued a summons to appear at the Customs House the following day. A fine of \$1.73 was imposed by the Customs Court but there was no criminal prosecution as a result of this incident.

OPINION

As is pointed out in the Examiner's opinion, there is substantial evidence on which to base the finding that Appellant knew the package of marijuana was in his pocket. His failure to produce it at first, when requested by the Port Patrol Officer to remove all the contents from his pockets,

strongly indicates that Appellant was attempting to conceal the package of marijuana. Certainly it was large enough for him to feel in his pocket if the Port Officer could detect its presence by examination.

Since it is the statutory duty of the U. S. Coast Guard to take adequate actions against seamen's documents in order to preserve discipline and safety on board American merchant vessels, it has been the consistent policy of the Coast Guard to revoke documents when the seaman has been associated in any way with narcotics. This is so because of the potential, as well as actual, danger which results from the presence of narcotics aboard merchant marine ships.

No sound reason has been presented which warrants my modification of the Examiner's order in favor of Appellant.

CONCLUSION

For this reason, the order of the Examiner is sustained.

ORDER

The order of the Examiner dated 12 October, 1949, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of February, 1950.